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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,242	11/21/2003	Michael Burleson	23-0335	2194
40158	7590	03/15/2006	EXAMINER	
WOODS FULLER SHULTZ & SMITH P.C. ATTN: JEFFREY A. PROEHL P.O. BOX 5027 SIOUX FALLS, SD 57117			JOHNSON, JERROLD D	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/719,242

Applicant(s)

BURLESON, MICHAEL

Examiner

Jerrold Johnson

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>21 Nov 03</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In both of these claims "the toothbrush" is set forth without any antecedent basis. Additionally, the aforementioned recitations of "the toothbrush" result in confusion to whether the intention of the claim is to set forth the toothbrush as part of the claimed combination, or to merely set it forth as intended use. Correction is required.

Additionally, the claims both set forth that the toothbrush is urged into a non-vertical orientation when in contact with the conical surface. This is confusing. The drawings (Figs. 2 and 3) both show the toothbrush being urged into a vertical orientation, and the specification describes the bristles not being in contact with the tubular storage member, which would result from the vertical orientation of the toothbrush.

Accordingly, from this evidence the Examiner believes that the proper reading of the claims is that of the toothbrush being vertical, as opposed to non-vertical when being urged by the conical bottom. Correction is required.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Yaneza US 4,957,125.

Re claim 1, Yaneza discloses the base 11,12, the tubular storage member 13, the toothbrush 31 being generally vertical (although it could be argued that any orientation other than perfectly vertical is “non-vertical”), the conical bottom surface 20 of the tubular storage member, and the floss dispensing assembly 24-27 coupled to the base.

Re claim 2, the floss dispensing assembly is shaped to resemble a “character”, which is the letter “o”.

Re claim 7, the tubular storage member is removable from the base.

Re claim 8, note the threads connecting element 14 to element 20.

Re claim 9, element 13 (top portion) is separable from element 20 (bottom portion).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5,6,11,13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yaneza in view of Hogan US 5,864,288.

Yaneza does not disclose an audio device in association with his toothbrush storage assembly.

Hogan discloses a toothbrush storage assembly that uses an audio device that can be an audio chip or a radio (col. 4). Audio chips are commonly referred to as "jukeboxes" and for that reason the claims read on such a chip. US Patents 5,670,730, 5,845,104 and 6,976,623 all evidence this use of the expression "jukebox", and are hereby set forth as extrinsic evidence of that fact.

Accordingly, it would be obvious to one of ordinary skill in the art to modify the storage assembly of Yaneza with the teachings of Hogan so as to provide a storage device that provides an audio indication of proper brushing time.

Claim 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yaneza in view of Oxenrider US 2,775,250.

Art Unit: 3728

Yaneza does not disclose slits. Yaneza does disclose the bottom portion 11,12 having an open top and a closed bottom 25 along with the slit (aperture 26).

Oxenrider discloses apertures on the top and bottom. Slits and apertures are art recognized equivalents in this usage of providing ventilation.

Accordingly, it would be obvious to one of ordinary skill in the art to modify the storage assembly of Yaneza with the teachings of Oxenrider so as to encourage drying of the toothbrush after its use.

Claims 1-7,9,11,13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gertler US 4,285,151 in view of Yaneza US 4,957,125, Hogan US 5,864,288 and Fitz US Des 345,824.

Gertler discloses a dental storage assembly comprising a base 12 and a character 10. An audio device is disposed in the base.

Yaneza discloses the tubular storage member along with the conical bottom surface 20, threads connecting 11 to 20, a closed bottom 25 of the bottom portion 11,12. The bottom portion 11 has an open top couplable to said top portion.

Fitz discloses a teaching showing how the character of Gertler could be used to dispense dental floss through a conduit in an arm portion.

Hogan teaches how the audio device of Gertler could be a radio or an audio chip (a.k.a jukebox).

Art Unit: 3728

Hogan further teaches in col. 7, lines 25-35 how storage devices like Gertler can be used to store other types of toothbrush assemblies, thus evidencing the suitability of the base of Gertler to hold the tubular storage member of Yaneza.

It further would have been obvious to one of ordinary skill in the art to provide the tubular storage member of Yaneza with upper and lower ventilation apertures (slits) so as to encourage drying and to discourage bacterial growth.

It further would have been obvious to one of ordinary skill in the art to provide the base of Gertler with the contemporary teachings of an audio chip (i.e. digital jukebox) or a radio chip so as to provide additional musical choices.

It further would have been obvious to one of ordinary skill in the art to provide the character of Gertler with the additional functionality of a floss dispenser as is taught by Fitz thus encouraging dental floss usage which is critical to oral hygiene.

Claim 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gertler US 4,285,151 in view of Yaneza US 4,957,125, Hogan US 5,864,288 and Fitz US Des 345,824, and further in view of Oxenrider US 2,775,250.

Yaneza does not disclose slits. Yaneza does disclose the bottom portion 11,12 having an open top and a closed bottom 25 along with the slit (aperture 26).

Oxenrider discloses apertures on the top and bottom. Slits and apertures are art recognized equivalents in this usage of providing ventilation.

Accordingly, it would be obvious to one of ordinary skill in the art to modify the storage assembly of Yaneza with the teachings of Oxenrider so as to encourage drying of the toothbrush after its use.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gertler US 4,285,151 in view of Yaneza US 4,957,125, Hogan US 5,864,288 and Fitz US Des 345,824, and, to the extent necessary further in view of Catterson US 6,186,324.

Gertler does not disclose a threaded connection between the tubular member and the base. However, Gertler does show what appears to be an interference fit between the tubular member and the base.

Threaded interfaces and interference fits are art recognized equivalents and accordingly, it would have been obvious to one of ordinary skill in the art to use a threaded interface instead of the interference fit so as to provide a stronger securement of the tubular member within the base.

Catterson in Figs. 4 and 5 disclose both threaded connections (14 within 12) and interference fits (14 within 36) in a single toothbrush holding device. Accordingly, one of ordinary skill in the art would recognize the equivalence of these two means.



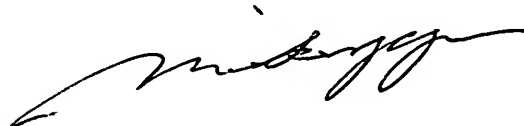
Art Unit: 3728

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDJ  

Mickey Yu  
Supervisory Patent Examiner  
Art Unit 3728